

Pounder Declaration

Exhibit F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TWELVE SIXTY LLC, ARON)
MARDEROSIAN and ROBERT)
MARDEROSIAN,)
Plaintiffs) Civil Action No.
vs.) 1-17-cv-01479
EXTREME MUSIC LIBRARY)
LIMITED, a division of Sony/)
ATV Music Publishing;)
EXTREME MUSIC LIMITED;)
VIACOM INTERNATIONAL, INC.;)
NEW CREATIVE MIX INC.; HYPE)
PRODUCTION MUSIC,)
Defendants.)

Videotaped deposition of ROBERT MARDEROSIAN

July 20, 2018

New York, New York

Reported by:

Lisa Forlano

Job no: 22271

Page 2

1
 2 Videotaped deposition of ROBERT
 3 MARDEROSIAN, taken by and before Lisa Forlano, CCR,
 4 CRR, RMR, at Pryor Cashman LLP, 7 Times Square, 40th
 5 Floor, New York, New York, on Friday, July 20, 2018,
 6 commencing at 10:10 a.m.

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A P P E A R A N C E S:

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	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>VIDEO OPERATOR: This is tape number one of the videotaped deposition of Robert Marderosian, in the matter of TwelveSixty LLC, Aron Marderosian, et al., versus Extreme Music Library Limited, et al., in the United States District Court for the Southern District of New York, file number 1-17-cv-01479-PAC. This deposition is being held at Pryor Cashman, LLP, at 7 Times Square in New York City on July 20, 2018 at approximately 10:10 a.m.</p> <p>My name is Morris Rhodes. I am the videographer from TransPerfect Legal Solutions. The court reporter is Lisa Forlano, also from TransPerfect Legal Solutions.</p> <p>Will counsel please introduce themselves.</p> <p>MR. MARDEROSIAN: My name is Mick Marderosian. I'm an attorney. I represent the Plaintiffs, and the deponent in this case, Robert Marderosian.</p> <p>MR. ZAKARIN: Don Zakarin, Pryor Cashman. With me is Ross Bagley. We represent the Extreme defendants.</p> <p>MR. HWANG: My name is Wook Hwang, with</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>A Regarding this legal matter, yes.</p> <p>Q So what I want to do is just give a few instructions and then we'll get to the guts of this. In terms of the process, I'm going to ask you questions, please wait until I'm done and then answer to the best of your ability. If you don't understand the question, let me know. I don't want you answering a question and I'm sure your counsel doesn't want you answering a question that I didn't ask. So if there's any lack of clarity, let me know and I'll rephrase it.</p> <p>A Understood.</p> <p>Q All questions are going to be answered, unless your counsel instructs you not to answer. There will be objections, I am sure. We have seen a few. And, again, unless there's an instruction not to answer, the question has to be answered.</p> <p>A Understood.</p> <p>Q Anytime you want to take a break, let me know, and we will immediately take a break. Hopefully, there will not be a question pending. If there is a question pending, I would prefer to get the answer before we take a break.</p> <p>So is that all clear to you?</p> <p>A Absolutely.</p>

1 A No, that is not. That information
 2 comes from the broadcaster when they're filling out
 3 the cue sheet from the usage.

4 Q So from the perspective of the
 5 publisher providing information, it's the author,
 6 the publisher, the title and the performing rights
 7 society; that's the metadata that you were referring
 8 to?

9 A Roughly, yes.

10 Q Okay. I just wanted to understand what
 11 that was.

12 In what form, to your knowledge, is
 13 that metadata supplied to broadcasters or program
 14 users?

15 MR. MARDEROSIAN: You mean in this
 16 case, Don, how is it?

17 MR. ZAKARIN: I'm trying to find in
 18 general first.

19 BY MR. ZAKARIN:

20 Q In general, do you know?

21 A I'm going to use this case as an
 22 example.

23 Q Sure.

24 A We've heard that Extreme, and I believe
 25 Mr. Emanuel testified to this, Extreme provides

1 A I do.

2 Q But you have been reported on your BMI
 3 statements by for thousands and tens of thousands of
 4 uses of your works by various and sundry
 5 broadcasters, correct?

6 A Correct.

7 Q And in order for them to report to you,
 8 BMI, they have to get the information from
 9 broadcasters or program suppliers, correct?

10 A I think this is what comes into
 11 question is what was asked yesterday of BMI. BMI is
 12 not aware of the audio pertaining to the
 13 registration or the metadata, let's call it.

14 Q I understand that. But the metadata
 15 for the composition sounds to be exactly the same as
 16 the metadata for the audio file --

17 A Right.

18 Q Let me at least get my question out.
 19 It seems to be the same, that it's the author, the
 20 publisher, the title, the performing rights society,
 21 and in addition for cue sheets, it's the program,
 22 it's the timing, it's other information as well,
 23 right?

24 A Let me clarify it, Mr. Zakarin. When
 25 our song "Mulholland Drive," we'll use it as an

1 their third parties with a drive which includes all
 2 that data, including audio, and has also, at times,
 3 been misreported on their website, Extreme Music,
 4 and also the A & E AETN music licensing website.

5 Q So the data is either provided by a
 6 drive which contains the information --

7 A Yeah.

8 Q -- correctly or incorrectly, or it's
 9 available to be obtained from the website, is that
 10 correct, the Extreme website?

11 A Correct. Correctly or incorrectly.

12 Q To the best of your knowledge, is the
 13 information sort of track specific. Is the
 14 information tied to each individual track that's on
 15 the drive?

16 MR. MARDEROSIAN: Track meaning the
 17 audio file?

18 MR. ZAKARIN: Yeah, audio file.

19 THE WITNESS: It should be. It should
 20 be.

21 BY MR. ZAKARIN:

22 Q And if I understand your testimony,
 23 it's your testimony that you believe that the
 24 metadata has been changed from time to time at
 25 least?

1 example, goes out on a drive, our audio, sound
 2 recording, I expected every time to be listed
 3 properly as the song title "Mulholland Drive," the
 4 author is Aron Marderosian, Robert Marderosian, the
 5 performing rights society, BMI. After that, it is
 6 up to the music supervisor or the third-party
 7 licensee broadcaster, let's call it, to fill out the
 8 cue sheet properly with the timing information and
 9 the nature of the use on the program that it was
 10 used.

11 Q I agree. And my question was going a
 12 little bit differently, so let's try to work through
 13 it, and then we can take a break in about five
 14 minutes. And then I'll try and race through and get
 15 rid of some more stuff.

16 A I'm here all night.

17 Q Fine with me as well, but maybe it's
 18 not fine with the court reporter, but we'll do our
 19 best to work through this.

20 What I was trying to get at is, you've
 21 been reported on from broadcasters by BMI for the
 22 broadcasters use of your works, or programmers use
 23 of your works, on tens of thousands of uses,
 24 correct?

25 A Correct.

1 Q In order for you to get reported by
 2 them, by BMI, and for BMI to get the information for
 3 those uses the metadata has to be correct, doesn't
 4 it?

5 A You're absolutely correct.

6 Q And so at least as to the reported uses
 7 that you've received and been paid on, you
 8 understand that the metadata should be correct,
 9 correct?

10 MR. MARDEROSIAN: Each and every time.

11 MR. ZAKARIN: Where he's being reported
 12 to and paid.

13 THE WITNESS: I understand what you're
 14 saying. I wouldn't be expected to be paid for
 15 anybody else's work, that's correct.

16 BY MR. ZAKARIN:

17 Q Mistakes happen and you may well be
 18 paid for other people's works occasionally?

19 A Yeah.

20 Q And, indeed, I think you may have
 21 mentioned something about that before.

22 A Not really related.

23 MR. MARDEROSIAN: Just for the record,
 24 I'm going to object to the use of the term
 25 "mistakes." It's argumentative.

1 registrations, various prefixes, multiple titles
 2 still being registered up to this point, et cetera,
 3 no tunes detected up to certain uses, payments for
 4 different titles on your statements, you come to the
 5 conclusion that someone is monkeying with your
 6 metadata and your audio.

7 Q So it's a conclusion you've reached.
 8 What is your actual evidence that any metadata has
 9 been changed?

10 MR. MARDEROSIAN: He's already
 11 explained that to you. I'm going to object to
 12 the term of "evidence," calling for a legal
 13 opinion and conclusion; and he's already
 14 answered the question. But you can answer it
 15 again.

16 THE WITNESS: Thank you. I'm going to
 17 refer back to Mr. Pounder's declaration. I
 18 think that was evidence enough that it is
 19 quite possible, and has happened, that our
 20 audio was used under someone else's
 21 methodology.

22 BY MR. ZAKARIN:

23 Q You're talking about, if I'm
 24 understanding you correctly, the Range Rover --
 25 A Land Rover.

1 BY MR. ZAKARIN:

2 Q So at least with respect to the tens of
 3 thousands of uses that have been reported and paid
 4 on, those should have been the correct information
 5 in order for you to get paid?

6 A That's right.

7 Q So did it occur to you that in order
 8 for that to happen over eight years, and for your
 9 view that the metadata gets changed, Extreme or
 10 Viacom would have to be changing and then changing
 11 back repeatedly the metadata in order to deprive you
 12 of some payment when thousands and tens of thousands
 13 of payments are coming through?

14 A Absolutely.

15 Q Okay.

16 And it's your view that they are
 17 devoting their time to monkeying with the metadata
 18 back and forth, back and forth, just to deprive you
 19 of payment?

20 A Now you sound like my grandfather using
 21 the term "monkeying."

22 Q I'm old enough to be your grandfather.

23 A Yes, I do. And I'll explain briefly.
 24 I come to this conclusion, because like we've said,
 25 when you've got various retitling, various

1 Q I must have been calling for the more
 2 expensive car.

3 A I wish I could afford one.

4 MR. MARDEROSIAN: I think that was one
 5 of the examples.

6 THE WITNESS: That's right.

7 MR. ZAKARIN: That's fine.

8 MR. MARDEROSIAN: In an e-mail, I think
 9 he said.

10 BY MR. ZAKARIN:

11 Q That's useful to me. I appreciate it.

12 MR. MARDEROSIAN: Can we take a -- if
 13 you're not wrapped up, we'll keep going.

14 MR. ZAKARIN: Let me just finish this
 15 page, ask a couple of questions, and then take
 16 a break for five minutes.

17 MR. MARDEROSIAN: That's fine.

18 MR. ZAKARIN: I'm going to mark as an
 19 exhibit.

20 THE WITNESS: Ten is coming.

21 MR. BAGLEY: Ten is coming.

22 THE WITNESS: The single page is 9.

23 MR. MARDEROSIAN: This is RM-10?

24 MR. ZAKARIN: Yes.

25 (BMI Royalty Statement for fourth

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<p>1 that production, was 31,296. That number has grown 2 since.</p> <p>3 Q Okay. You listened to all 31,000-plus 4 of those audio files?</p> <p>5 A As Don said, a lot of them are grouped 6 together; but yes, we have.</p> <p>7 Q Okay. And of those detections, how 8 many, if you know, were for in-program uses?</p> <p>9 A Without my notes in front of me, tough 10 to say off the top of my head. I'd say a fair 11 amount of them.</p> <p>12 Q Do you know? Can you give me a range?</p> <p>13 A No. I can't give you a range.</p> <p>14 Q You haven't quantified it?</p> <p>15 A No, there's an expert that's putting 16 that together for this.</p> <p>17 Q Is that expert Bob Cohen?</p> <p>18 A That's between you and my attorney. 19 You're welcome to ask him, Mr. Hwang. I will make 20 note, though, that the amount of usages detected in 21 these TuneSat are far less than in the cue sheets 22 that were turned in and far less than the cue sheets 23 that were turned in to Extreme.</p> <p>24 MR. MARDEROSIAN: And the answer is 25 there are auditing consultants that I have</p>	<p>1 2 C E R T I F I C A T I O N 3 4 I, LISA FORLANO, a Certified Realtime 5 Reporter, Certified Court Reporter and Notary 6 Public, do hereby certify that I reported the 7 deposition in the above-captioned matter, that 8 the said witness was duly sworn by me; that 9 the foregoing is a true and correct transcript 10 of the stenographic notes of testimony taken 11 by me in the above-captioned matter. 12 I further certify that I am not an 13 attorney or counsel for any of the parties, 14 not a relative or employee of any attorney or 15 counsel connected with the action, nor 16 financially interested in the action.</p> <p>17 18 LISA FORLANO, CRR, CCR #XI01143 19 20 Dated: August 2, 2018 21 22 23 24 25</p>
<p>1 2 retained.</p> <p>3 MR. HWANG: With that, I have no 4 further questions.</p> <p>5 MR. MARDEROSIAN: I have no questions.</p> <p>6 MR. ZAKARIN: I have no questions.</p> <p>7 VIDEO OPERATOR: We are now going off 8 the record at 10:14 p.m. This concludes tape 9 and the deposition of Robert Marderosian.</p> <p>10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>Page 537</p> <p>1 JURAT 2 I, ROBERT MARDEROSIAN, the witness herein, 3 the foregoing testimony of the pages of this 4 deposition, do hereby certify it to be a true 5 and correct transcript, subject to the corrections, 6 if any, shown on the attached page.</p> <p>7 8 9 ROBERT MARDEROSIAN 10 11 12 13 14 Subscribed and Sworn to before me 15 this _____ day of 2018. 16 17 Notary Public 18 19 20 21 22 23 24 25</p>

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1 I wish to make the following changes, for
2 the following reason:
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